

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN ASSEMBLY SEPTEMBER 3, 2015

AMENDED IN SENATE JUNE 2, 2015

SENATE BILL

No. 163

Introduced by Senator Hertzberg

February 4, 2015

An act to add Section 13557.5 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Hertzberg. Wastewater treatment: recycled water.

The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable use or unreasonable method of use of water be prevented. Existing law declares that the use of potable domestic water for certain nonpotable uses is a waste or an unreasonable use of water if recycled water is available, as determined by the State Water Resources Control Board, and other requirements are met.

Under existing law, the state board and the 9 California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

This bill would declare ~~that the discharge of treated wastewater from ocean outfalls, that, except in compliance with the bill's provisions, it is a waste and unreasonable use of water in light of the cost-effective opportunities to recycle this water for further beneficial use. This bill,~~

~~on or before January 1, 2026, would require a wastewater treatment facility discharging through an ocean outfall to achieve at least 50% reuse of the facility's actual annual flow, as defined, for beneficial purposes. This bill, on and after January 1, 2036, would prohibit the discharge of treated wastewater through ocean outfalls, except as backup discharge, as defined, and would require a wastewater treatment facility to achieve 100% reuse of the facility's actual annual flow for beneficial purposes. This bill, on and after January 1, 2022, would authorize a NPDES permitholder subject to these requirements to petition the state board for a partial exemption to the above-described requirements. This bill would require the state board to determine, after notice and opportunity for comment, whether the petition demonstrates that the NPDES permitholder cannot comply with these reuse requirements and would provide that an exemption from these reuse requirements is valid for a period of no more than 5 years, at which point the NPDES permitholder is required to reapply for an exemption or comply with these reuse requirements. This bill would prohibit a NPDES permitholder subject to these provisions from being eligible for state grants or loans if they receive a partial exemption to these reuse requirements, unless the state grant or loan is solely for the purpose of achieving compliance with these reuse requirements.~~ *water to discharge treated wastewater from an ocean or bay outfall, or for a water supplier or water replenishment district to not take treated wastewater made available for certain purposes. The bill would require the state board to promulgate regulations, on or before January 1, 2020, that would require each NPDES permitholder, on or before January 1, 2023, to submit to the state board the permitholder's plans to achieve beneficial reuse, to the maximum extent possible, of treated wastewater that would otherwise be discharged through ocean or bay outfalls. The bill would require these regulations to require, on or before January 1, 2033, the beneficial reuse of at least 50% of treated wastewater that the NPDES permitholder would otherwise discharge though ocean or bay outfalls relative to the inflow to the treatment plant. The bill would require the regulations to provide operational and compliance flexibility, as specified. The bill would authorize the state board to convene an advisory group and to consider any other recommendations or testimony provided during the regulation adoption process. The bill would authorize the state board to adopt reasonable fees payable by a holder of an NPDES permit to recover costs incurred in administering these provisions.*

~~This bill would require a holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall as of January 1, 2016, to submit, on or before July 1, 2020, a prescribed plan to meet these provisions, directly or by contract, to the executive director of the state board and would require the plan to be updated on or before January 1, 2024. This bill, on or before January 1, 2017, and by January 1 every 5 years thereafter, would require the holder of a NPDES permit authorizing the discharge of wastewater through an ocean outfall to submit a report to the executive director of the state board summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of these provisions. This bill would require the state board to submit a report to the Governor and the Legislature on the implementation of these provisions on or before July 1, 2021, and by July 1 every 5 years thereafter.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13557.5 is added to the Water Code, to
2 read:
3 13557.5. (a) The Legislature hereby finds and declares that,
4 except in compliance with the provisions of this section, it is a
5 waste and unreasonable use of water within the meaning of Section
6 2 of Article X of the California Constitution to discharge treated
7 wastewater from an ocean or bay outfall, or for a water supplier
8 or water replenishment district to not take treated wastewater
9 made available to the supplier or district for groundwater
10 recharge, surface water augmentation, or landscape irrigation.
11 (b) On or before January 1, 2020, the state board shall
12 promulgate regulations to require both of the following:
13 (1) On or before January 1, 2023, each holder of an NPDES
14 permit to submit to the state board the permitholder's plans to
15 achieve beneficial reuse, to the maximum extent possible, of treated
16 wastewater that would otherwise be discharged through ocean or
17 bay outfalls.
18 (2) On or before January 1, 2033, the beneficial reuse of at
19 least 50 percent of treated wastewater that the NPDES
20 permitholder would otherwise discharge through ocean or bay
21 outfalls relative to the inflow to the treatment plant.

1 (c) The regulations promulgated pursuant to subdivision (b)
2 shall provide operational and compliance flexibility in the event
3 of an emergency, scheduled maintenance or repairs, extreme
4 weather events, or any other factor that the board determines
5 warrants consideration.

6 (d) In developing the regulations pursuant to subdivision (b),
7 the state board may convene an advisory group for the purpose
8 of preparing a report or recommendations to the state board about
9 how to implement this section and the state board may consider
10 any other recommendations or testimony provided during the
11 regulation adoption process.

12 (e) Consistent with Section 3 of Article XIII A of the California
13 Constitution, the state board may adopt reasonable fees payable
14 by a holder of an NPDES permit to recover costs incurred in
15 administering this section.

16 ~~SECTION 1. The Legislature finds and declares all of the~~
17 ~~following:~~

18 ~~(a) Severe drought conditions have persisted for the last three~~
19 ~~years in California, and 2013 was the state's driest calendar year~~
20 ~~on record.~~

21 ~~(b) California's water supplies have dipped to alarmingly low~~
22 ~~levels indicated by the very limited snowpack in the Sierra Nevada~~
23 ~~Mountains, declining water levels in the state's largest water~~
24 ~~reservoirs, reduced surface water flows in major river systems,~~
25 ~~and historically low groundwater levels. These water supplies~~
26 ~~continue to be severely depleted despite a limited amount of winter~~
27 ~~precipitation in 2014.~~

28 ~~(c) The duration of the drought is unknown, but based on the~~
29 ~~projected impact of climate change on California's snowpack,~~
30 ~~extremely dry conditions will likely continue beyond this year and~~
31 ~~occur more regularly in the future.~~

32 ~~(d) Continuous severe drought conditions present urgent~~
33 ~~challenges across the state, including, but not limited to, water~~
34 ~~shortages in communities and for agricultural production, increased~~
35 ~~risk of wildfires, degraded habitat for fish and wildlife, and threat~~
36 ~~of saltwater contamination in large fresh water supplies.~~

37 ~~(e) Water reuse is one of the most efficient and cost-effective~~
38 ~~ways to improve the drought resilience of California communities.~~

39 ~~(f) The State Water Resources Control Board has established~~
40 ~~goals of recycling 1,500,000 acre-feet of wastewater by 2020 and~~

1 2,500,000 acre-feet of wastewater by 2030. However, California
2 is not on track to meet the board's goals:

3 (g) ~~The discharge of treated wastewater from ocean outfalls~~
4 ~~constitutes waste and unreasonable use of water within the meaning~~
5 ~~of Section 2 of Article X of the California Constitution, in light of~~
6 ~~the opportunities to recycle this water for further beneficial use.~~

7 (h) ~~By prohibiting ocean discharges from wastewater treatment~~
8 ~~plants, California could dramatically accelerate the adoption of~~
9 ~~water recycling and thus increase water supply available for~~
10 ~~beneficial use.~~

11 (i) ~~Water recycling can reduce California's dependence on~~
12 ~~diversions from surface rivers and streams that are subject to~~
13 ~~variable climate and regulatory conditions.~~

14 (j) ~~In addition to water supply benefits, requiring water recycling~~
15 ~~for further beneficial use eliminates ocean wastewater discharges,~~
16 ~~decreasing pollutant loadings to ocean waters and improving~~
17 ~~coastal water quality, thereby benefitting the aquatic environment~~
18 ~~and local economies that depend on those coastal resources.~~

19 SEC. 2. ~~Section 13557.5 is added to the Water Code, to read:~~

20 13557.5. (a) ~~The Legislature hereby finds and declares that~~
21 ~~the discharge of treated wastewater from ocean outfalls, except in~~
22 ~~compliance with the provisions of this section, is a waste and~~
23 ~~unreasonable use of water within the meaning of Section 2 of~~
24 ~~Article X of the California Constitution in light of the cost-effective~~
25 ~~opportunities to recycle this water for further beneficial use,~~
26 ~~including both potable and nonpotable uses.~~

27 (b) ~~On or before January 1, 2026, each wastewater treatment~~
28 ~~facility that discharges through an ocean outfall shall achieve at~~
29 ~~least 50 percent reuse of the facility's actual annual flow for~~
30 ~~beneficial purposes.~~

31 (c) ~~On and after January 1, 2036:~~

32 (1) ~~A wastewater treatment facility shall not discharge treated~~
33 ~~wastewater through ocean outfalls, except as a backup discharge.~~
34 ~~A backup discharge may occur only during periods of reduced~~
35 ~~demand for reclaimed water in the reuse system, such as a period~~
36 ~~of wet weather.~~

37 (2) ~~Each wastewater treatment facility shall achieve 100 percent~~
38 ~~reuse of the facility's actual annual flow for further beneficial use.~~

39 (d) (1) ~~A holder of a NPDES permit authorizing the discharge~~
40 ~~of wastewater through an ocean outfall as of January 1, 2016, shall~~

1 submit, on or before July 1, 2020, a plan to meet the requirements
2 of this section, directly or by contract, to the executive director of
3 the state board that contains all of the following:

4 (A) ~~An identification of all land acquisition and facilities~~
5 ~~necessary to provide for treatment, transport, and reuse of treated~~
6 ~~wastewater.~~

7 (B) ~~An analysis of the costs to meet the requirements of this~~
8 ~~section.~~

9 (C) ~~A financing plan for meeting the requirements of this~~
10 ~~section, including identifying any actions necessary to implement~~
11 ~~the financing plan, such as bond issuance or other borrowing,~~
12 ~~assessments, rate increases, fees, charges, or other financing~~
13 ~~mechanisms.~~

14 (D) ~~A detailed schedule for the completion of all necessary~~
15 ~~actions.~~

16 (E) ~~Supporting data and other documentation accompanying~~
17 ~~the plan.~~

18 (2) ~~On or before January 1, 2024, the plan described in~~
19 ~~paragraph (1) shall be updated and submitted to the executive~~
20 ~~director of the state board by the permit holder to include any~~
21 ~~refinements or changes in the costs, actions, or financing necessary~~
22 ~~to achieve full recycling of all wastewater and thereby eliminate~~
23 ~~the ocean outfall discharge in accordance with this section or a~~
24 ~~written statement that the plan is current and accurate.~~

25 (e) ~~On or before January 1, 2017, and by January 1 every five~~
26 ~~years thereafter, the holder of a NPDES permit authorizing the~~
27 ~~discharge of wastewater through an ocean outfall shall submit to~~
28 ~~the executive director of the state board a report summarizing the~~
29 ~~actions accomplished to date and the actions remaining and~~
30 ~~proposed to meet the requirements of this section. The report shall~~
31 ~~include progress toward meeting the deadlines set forth in~~
32 ~~subdivisions (b) to (d), inclusive, and specifically include the~~
33 ~~detailed schedule for, and status of, the following:~~

34 (1) ~~Evaluation of reuse and disposal options.~~

35 (2) ~~Preparation of preliminary design reports.~~

36 (3) ~~Preparation and submission of permit applications.~~

37 (4) ~~Construction initiation.~~

38 (5) ~~Construction progress milestones.~~

39 (6) ~~Construction completion.~~

40 (7) ~~Initiation of operation.~~

1 ~~(8) Continuing operation and maintenance.~~

2 ~~(f) (1) On or before July 1, 2021, and by July 1 every five years~~
3 ~~thereafter, the state board shall submit a report to the Governor~~
4 ~~and the Legislature on the implementation of this section. The~~
5 ~~report shall summarize the progress up to date, including the~~
6 ~~increased amount of reclaimed water provided and potable water~~
7 ~~offsets achieved, and shall identify any obstacles to continued~~
8 ~~progress, including all instances of substantial noncompliance.~~

9 ~~(2) A report to be submitted pursuant to paragraph (1) shall be~~
10 ~~submitted in compliance with Section 9795 of the Government~~
11 ~~Code.~~

12 ~~(g) (1) On and after January 1, 2022, a NPDES permitholder~~
13 ~~subject to the requirements of this section, may petition the state~~
14 ~~board for a partial exemption to the requirements of this section.~~
15 ~~The petition shall include the information required in subdivisions~~
16 ~~(d) and (e), and shall demonstrate that the NPDES permitholder~~
17 ~~cannot comply with the requirements of this section for one of the~~
18 ~~following reasons:~~

19 ~~(A) The state board has failed to adopt regulations that approve~~
20 ~~the indirect potable reuse of wastewater.~~

21 ~~(B) Upgrading the wastewater treatment plant to achieve~~
22 ~~recycled water standards produces recycled water that costs more~~
23 ~~than twice the cost per acre foot as compared with other new~~
24 ~~surface and groundwater supplies.~~

25 ~~(C) The wastewater treatment plant has achieved water quality~~
26 ~~standards for recycled water, but there is not sufficient demand~~
27 ~~for this water within the region.~~

28 ~~(2) The state board shall determine, after notice and opportunity~~
29 ~~for comment, whether the petition demonstrates that the NPDES~~
30 ~~permitholder cannot comply with the requirements of this section~~
31 ~~pursuant to paragraph (1). If the state board approves the partial~~
32 ~~exemption to the requirements of this section, that exemption shall~~
33 ~~be valid for a period of no more than five years, at which point the~~
34 ~~NPDES permitholder shall reapply for an exemption or comply~~
35 ~~with the requirements of this section.~~

36 ~~(3) A NPDES permitholder subject to the requirements of this~~
37 ~~section shall not be eligible for state grants or loans if they receive~~
38 ~~a partial exemption to the requirements of this section pursuant to~~
39 ~~this subdivision, unless the state grant or loan is solely for the~~

1 ~~purpose of achieving compliance with the requirements of this~~
2 ~~section.~~

3 ~~(h) As used in this section:~~

4 ~~(1) “Actual annual flow” means the annual average flow of~~
5 ~~treated wastewater discharging through a facility’s ocean outfall~~
6 ~~as determined by the state board using monitoring data available~~
7 ~~for calendar years 2009 to 2014, inclusive.~~

8 ~~(2) “Backup discharge” means a surface water discharge that~~
9 ~~occurs as part of a functioning reuse system that has been permitted~~
10 ~~in accordance with the rules of the state board and that provides~~
11 ~~reclaimed water for irrigation or public access areas, residential~~
12 ~~properties, edible food crops, sea water barrier injection to protect~~
13 ~~groundwater resources, groundwater replenishment, industrial~~
14 ~~cooling, or other acceptable reuse purposes. “Backup discharge”~~
15 ~~may also include releases to the ocean on an emergency basis, as~~
16 ~~approved by a regional board, for a duration not to exceed 90 days~~
17 ~~and only in the quantities as are necessary in the event of a storm~~
18 ~~or other cause that impedes groundwater replenishment.~~